



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	04/10/14	Bill No:	Senate Bill 1413
Tax Program:	Fire Prevention Fee	Author:	Wyland
Sponsor:	BOE Member Runner	Code Sections:	PRC Sections 4213, 4220 & 4222
Related Bills:	Assembly Bill 1519 (Donnelly) Assembly Bill 1954 (Harkey) Assembly Bill 2048 (Dahle)	Effective Date:	01/01/15

BILL SUMMARY

This bill extends the date by which the annual fire prevention fee assessment is due and payable, as well as the time period in which to file a petition for redetermination, from 30 to 60 days.

Summary of Amendments

Since the previous analysis, this bill was amended to provide a feepayer a corresponding 60-day period to file a petition for redetermination.

ANALYSIS

CURRENT LAW

Fire Prevention Fee. Existing law¹ requires the Board of Equalization (BOE) to collect an annual fire prevention fee in accordance with the Fee Collection Procedures Law (FCPL).² The fee benefits the California Department of Forestry and Fire Protection (CAL FIRE), which is responsible for fire prevention and suppression in areas that the State Board of Forestry and Fire Protection (Fire Board) has determined are state responsibility areas (SRAs). As required,³ the Fire Board adopted emergency regulations to establish a fire prevention fee. The fee amount is not permitted to exceed \$150 per habitable structure on a parcel located within an SRA, except as it is adjusted annually by the Fire Board. Public Resources Code (PRC) Section 4102 defines an SRA as an area over which the Fire Board determines that the prevention and suppression of fires is primarily the financial responsibility of the state. PRC Section 4125 requires the Fire Board to classify all state lands and determine the areas in which the state has primary financial responsibility for fire prevention and suppression.

Beginning July 1, 2013, the Fire Board must annually adjust the fire prevention fee.⁴ The adjustment reflects the percentage of change in the average annual value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States. While the Fire Board set the fiscal year (FY) 2013-14

¹ Public Resources Code (PRC) Section 4213.

² Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code (RTC).

³ PRC Section 4212(a).

⁴ PRC Section 4212(b).

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fee at \$152.33, most bills will be for \$117.33, as most owners will receive a \$35 reduction in the fee.⁵

Collection and Administration. Commencing with FY 2011-12, the BOE collects the fire prevention fee annually. The FCPL governs the BOE's collection function.

The FCPL generally provides for the BOE's administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE's authority to adopt regulations related to the FCPL's administration and enforcement.

By each January 1, CAL FIRE transmits to the BOE the name, address, and assessment amount of each person liable for the fee. In addition, CAL FIRE provides to the BOE a telephone number that fee payers may use to obtain responses to their fee questions.

Annual fire prevention fee assessments are due and payable to the BOE 30 days after assessment. The amount assessed becomes final at the end of the 30-day period, unless a fee payer files a petition for redetermination within that period. If a fee payer files a timely petition for redetermination, all legal collection actions are held until CAL FIRE's final determination.

The BOE lacks authority to decide or review any petition for redetermination or claim for refund of a fee that CAL FIRE determines is due. CAL FIRE handles all appeals, and in those cases where CAL FIRE determines a refund is appropriate, a person may file a refund claim with the BOE.⁶

The fire prevention fee may not be collected if, in any given fiscal year, the SRA Fire Prevention Fund (Fund) has sufficient funds to finance specified prevention activities. The law requires the Fund to be used to cover any startup costs incurred over a two-year period.

PROPOSED LAW

This bill extends from 30 to 60 days the date the annual fire prevention fee assessment is due and payable. It also provides a fee payer a corresponding 60-day period to file a petition for redetermination.

The bill would become effective on January 1, 2015.

BACKGROUND

On July 7, 2011, Governor Brown signed ABx1 29,⁷ which required the BOE to collect the new fire prevention fee, commencing with FY 2011-12. However, collection of the fee was delayed due to several factors, including adoption of the emergency regulations and the costs of implementation.

Governor Brown's signing message for ABx1 29 states, in part, "A fee consistent with the 'beneficiary pays principle,' such as the one intended in this bill, can achieve significant General Fund savings. However, as currently drafted, the revenues may not

⁵ If a habitable structure is also within the boundaries of a local agency that provides fire protection services, the property owner will receive a \$35 reduction for each habitable structure. Over 90% of habitable structures in an SRA are also covered by a local fire protection agency.

⁶ PRC Section 4213(a)(3)(A)-(B) does not allow BOE to accept claims for refund on the basis that the person is not subject to the fee or that the fee is improperly calculated. However, the BOE may directly process certain administrative refund claims (e.g., overpayments).

⁷ Chapter 8, Stats. 2011.

materialize. I am directing the Department of Finance and CAL FIRE to work with the Legislature during the remaining legislative session to identify necessary clean-up language to realize these revenues.”

Since then, numerous unsuccessful bills have been introduced to repeal, replace, or provide a fire fee exemption. Bills introduced during the last two legislative sessions include:

Bill No.	Session	Author	Fire Fee Bills
AB 23	2013-14	Donnelly	Proposed repeal of the fire prevention fee.
AB 124	2013-14	Morrell	Proposed repeal of the fire prevention fee.
AB 468	2013-14	Chesbro	Would have repealed the fire prevention fee and replaced it with a 4.8% surcharge on commercial and residential fire and multi-peril insurance policy premiums.
AB 929	2013-14	Jones	Was intended to implement reimbursement procedures for persons who have paid a fire prevention fee covering a structure that was previously in an SRA, but that was determined to no longer be within an SRA's boundaries.
SB 17	2013-14	Gaines	Legislative intent to repeal the fire prevention fee.
SB 125	2013-14	Gaines	Proposed exemption from the fire prevention fee for those properties with a habitable structure that lies within both an SRA and the boundaries of a local fire district that provides fire protection service.
SB 147	2013-14	Gaines	Proposed exemption from the fire prevention fee for those property owners with income of less than 200% of the federal poverty level.
ABx1 24	2011-12	Blumenfield	Proposed a fire protection fee to fund fire suppression and prevention and emergency response efforts in SRAs.
ABx1 45	2011-12	Jeffries	Proposed repeal of the fire prevention fee.
AB 1506	2011-12	Jeffries and Cook	Proposed repeal of the fire prevention fee.
SB 1040	2011-12	Evans	Proposed repeal of the fire prevention fee.
AB 2474	2011-12	Chesbro	Proposed a credit of up to \$150 against the fire prevention fee of amounts paid to a local agency for fire protection services.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by BOE Member George Runner and is intended to provide additional time for feepayers to timely pay their bills. It intends to provide those feepayers on fixed incomes additional time to adjust their budgets.
2. **The April 10, 2014 amendments** provide a feepayer a corresponding 60-day period in which to file a petition for redetermination, as suggested in the prior BOE staff analysis.
3. **The 60-day period is consistent with California's income tax law, but not with most BOE administered tax and fee programs.** Current state income tax law⁸ provides that a notice of proposed deficiency assessment is final after a 60-day period, unless within 60 days after the mailing of a notice of proposed assessment, a taxpayer files with the Franchise Tax Board (FTB) a written protest against the proposed deficiency assessment, specifying in the protest the grounds upon which it is based. The deficiency assessment is due and payable 15 days from the date of a notice and demand for payment.⁹ The FTB's notice of proposed assessment is similar to the fire prevention fee notice of determination.

Currently, the BOE administers more than 30 tax and fee programs, none of which provides a 60-day period to pay the tax or fee or file a petition for redetermination. In general, under existing laws,¹⁰ a petition for redetermination must be filed within 30 days from the date that the notice of determination or notice of deficiency assessment was mailed to the taxpayer or feepayer. If a petition for redetermination is not filed within the 30-day period, the determination becomes final and due and payable at the expiration of the 30-day period.

4. **The bill now provides a corresponding amount of time within which to dispute the fee.** Allowing the same timeframe to file a petition for redetermination as is provided to pay the original determination provides a logical and consistent policy which should diminish any taxpayer confusion.
5. **Related bills.** AB 1519 (Donnelly) deletes the 20% fire prevention fee penalty that is added to final redeterminations for each 30-day period the fee remains unpaid. AB 1954 (Harkey) changes the finality date of a petition for redetermination from 30 to 90 days and, within that 90 days, allows a feepayer to appeal to the BOE those redeterminations that deny all or part of a refund. AB 2048 (Dahle et al.) among its fire prevention fee provisions, adds definitions, makes permissive the annual rate adjustment, clarifies the imposition of the fee, provides a disaster relief provision, adds a "late protest" procedure, and replaces the 20% penalty with a 10% penalty.

⁸ RTC Sections 19041 and 19042.

⁹ RTC Section 19049.

¹⁰ RTC Sections 6561 (Sales and Use Tax Law), 7710 (Motor Vehicle Fuel Tax Law), 8851 (Use Fuel Tax Law), 30261 (Cigarette and Tobacco Products Tax Law), 32301 (Alcoholic Beverage Tax Law), 38441 (Timber Yield Tax Law), 40091 (Energy Resources Surcharge Law), 41085 (Emergency Telephone Users Surcharge Law), 43301 (Hazardous Substances Tax Law), 45301 (Integrated Waste Management Fee Law), 46351 (Oil Spill Response, Prevention, and Administration Fees Law), 50114 (Underground Storage Tank Maintenance Fee Law), 55081 (Fee Collection Procedures Law), and 60350 (Diesel Fuel Tax Law).

COST ESTIMATE

The BOE would incur some minor costs for computer programming and revising information and publications. A cost estimate is pending.

REVENUE ESTIMATE**BACKGROUND, METHODOLOGY, AND ASSUMPTIONS**

Annual fee assessments are due and payable to the BOE 30 days from the date of assessment by the BOE. BOE staff reports that during FYs 2011-12 and 2012-13, interest and penalties paid totaled \$2,751,802. Of that amount, \$921,654 in interest and penalties was remitted on fees paid between 31 and 60 days from the date of assessment and, under this bill, this amount would not have been paid. Assuming delinquencies were the same over those two years, the annual average revenue loss is therefore computed as:

$$\$921,654 / 2 = \$460,827$$

REVENUE SUMMARY

If the fire prevention fee due date is extended to 60 days from the date of assessment, the average annual revenue loss would be \$460,827.

Qualifying Remarks. This fee program is new. Our sample size is small and estimated revenue loss is reflective of just two fiscal-years of data.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

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